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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/770,418

02/04/2004

Herve Le Mouellic

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EXAMINER

SHEN, WU CHENG WINSTON

ART UNIT

PAPER NUMBER

1632

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/770,418</p>	<p>Applicant(s) LE MOUELLIC ET AL.</p>	
	<p>Examiner WU-CHENG Winston SHEN</p>	<p>Art Unit 1632</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 71-77.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 3. NOTE: The proposed amendments to (i) amend claim 71 by deletion of limitation "the first gene product is part or all of a receptor", (ii) amend claim 76 by deletion of limitation "the first gene product is part or all of an interferon", and (iii) amend claim 77 by deletion of limitation "the first gene product is part or all of an interleukin" raise new issues that would require further consideration and/or search for prior art.

Continuation of 11. does NOT place the application in condition for allowance because:

(i) Applicant's arguments have failed to overcome the rejection of claims 71 and 73 under 35 U.S.C. 103(a) as being unpatentable over Nandi et al. (Nandi et al., Regulated expression of genes inserted at the human chromosomal beta-globin locus by homologous recombination. Proc Natl Acad Sci U S A. 85(11):3845-3849, 1988) in view of Petkovich et al. (Petkovich et al., A human retinoic acid receptor which belongs to the family of nuclear receptors. Nature 330(6147): 444-50, 1987) BECAUSE Applicant's arguments rely on the proposed claim amendments, which have not been entered. The rejection is maintained of the record.

(ii) Applicant's arguments have failed to overcome the rejection of claim 76 under 35 U.S.C. 103(a) as being unpatentable over Nandi et al. (Nandi et al., Regulated expression of genes inserted at the human chromosomal beta-globin locus by homologous recombination. Proc Natl Acad Sci U S A. 85(11):3845-3849, 1988) in view of Chernajovsky et al. (Chernajovsky et al., Efficient constitutive production of human fibroblast interferon by hamster cells transformed with the IFN-beta 1 gene fused to an SV40 early promoter. DNA 3(4): 297-308, 1984) BECAUSE Applicant's arguments rely on the proposed claim amendments, which have not been entered. The rejection is maintained of the record.

(iii) Applicant's arguments have failed to overcome the rejection of claim 77 under 35 U.S.C. 103(a) as being unpatentable over Nandi et al. (Nandi et al., Regulated expression of genes inserted at the human chromosomal beta-globin locus by homologous recombination. Proc Natl Acad Sci U S A. 85(11):3845-3849, 1988) in view of Lindenmaier et al. (Lindenmaier et al., Isolation of a functional human interleukin 2 gene from a cosmid library by recombination in vivo. Gene 39(1): 33-9, 1985) BECAUSE Applicant's arguments rely on the proposed claim amendments, which have not been entered. The rejection is maintained of the record.

(iv) Applicant's arguments have failed to overcome the rejection of claims 71 and 74 under 35 U.S.C. 103(a) as being unpatentable over Nandi et al. (Nandi et al., Regulated expression of genes inserted at the human chromosomal beta-globin locus by homologous recombination. Proc Natl Acad Sci U S A. 85(11):3845-3849, 1988) in view of Petkovich et al. (Petkovich et al. A human retinoic acid receptor which belongs to the family of nuclear receptors. Nature 330(6147): 444-50, 1987) as applied to claim rejection of claims 71 and 73 above, and further in view of George et al. (George et al., Receptor density and cAMP accumulation: analysis in CHO cells exhibiting stable expression of a cDNA that encodes the beta 2-adrenergic receptor. Biochem Biophys Res Commun. 150(2): 665-72, 1988) and Emorine et al. (Emorine et al., Molecular characterization of the human beta 3-adrenergic receptor. Science 245(4922): 1118-21, 1989) BECAUSE Applicant's arguments rely on the proposed claim amendments, which have not been entered. The rejection is maintained of the record.

(v) Applicant's arguments have failed to overcome the rejection of claims 71, 72 and 75 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Nandi et al. (Nandi et al., Regulated expression of genes inserted at the human chromosomal beta-globin locus by homologous recombination. Proc Natl Acad Sci U S A. 85(11):3845-3849, 1988) in view of Petkovich et al. (Petkovich et al. A human retinoic acid receptor which belongs to the family of nuclear receptors. Nature 330(6147): 444-50, 1987) as applied to claim rejection of claims 71 and 73 above, and further in view of Sleckman et al. (Sleckman et al., Expression and function of CD4 in a murine T-cell hybridoma. Nature 328(6128): 351-3, 1987) BECAUSE Applicant's arguments rely on the proposed claim amendments, which have not been entered. The rejection is maintained of the record.

/Wu-Cheng Winston Shen/
Patent Examiner, Art Unit 1632